

**SECTION 40: GENERAL ADMINISTRATIVE REQUIREMENTS FOR ALL PARTIES**

**40.01 RESPONSIBILITY OF AAA, SERVICES PROVIDERS AND AUTHORIZED AGENTS OF THE BUREAU OF ELDER AND ADULT SERVICES WHEN DENYING, REDUCING OR TERMINATING BUREAU OF ELDER AND ADULT SERVICES FUNDED SERVICES PURSUANT TO THIS POLICY MANUAL.**

**(A) Notice of Intent to Deny, Reduce or Terminate Services.** When a AAA, service provider or authorized agent of the Bureau of Elder and Adult Services decides to deny-or terminate eligibility or to reduce covered services to a consumer pursuant to this policy manual, the consumer must be given written notice.

**(1)** Specific information that must be included in these notices include:

- (a)** A statement of the intended action;
- (b)** An explanation of the action being taken;
- (c)** The effective date of the action;
- (d)** An explanation of when and how to request a hearing before the Office of Administrative Hearings as provided for in Section 40. 02 of this Manual;
- (e)** The name, address and telephone number of the person to be contacted to request a hearing;
- (f)** A list of selected legal assistance providers and advocacy agencies available to assist the consumer; and
- (g)** An explanation of the circumstances under which services will continue if a hearing is requested.

**(B) Advance Notice**

**(1)** Written notice must be mailed or otherwise provided at least ten (10) calendar days before the effective date of the termination or reduction of services, except as provided in subsection (2) below or in Section 40.01(C) below.

**(2)** When there are facts that indicate that the action should be taken because of probable fraud by the consumer, and the facts have been verified if possible, advance notice of five (5) calendar days is required.

**(C) Exceptions from Advance Notice.**

**(1)** The AAA, service provider or authorized agent of the BEAS may mail or otherwise provide written notice no later than the effective date of the reduction or termination when:

- a-** there is documentation in the record that continued service to a consumer would endanger the life, health or safety of other individuals including other

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consumers or agents or employees of the AAA, service provider or authorized agent;

- b. there is a clear documented statement, signed by the consumer, that the consumer no longer wishes services, or;
- c. the consumer gives information that requires termination or reduction of services and indicates that he or she understands that this termination or reduction is the result of giving that information;
- d. the consumer has been admitted to an institution where he or she is ineligible for further services;
- e. the consumer's whereabouts are unknown, and the post office returns agency mail directed to him or her indicating no forwarding address; or

**(D) Exception to Notice:** When the written care plan developed between the consumer and the authorized agent includes a scheduled reduction or termination of services, written notice is not required.

**(E) Maintaining Services.** Services currently being provided to the consumer will be continued until a hearing has been held and a final decision rendered, provided that the request for a hearing has been received within ten calendar days of notice except:

- (1) when a five day advance notice is required under this section, the request for hearing must be received within five calendar days of the date of the notice;
- (2) when ten day or five day advance notice is not required under this section, services currently being provided to the consumer will not be continued during the appeal process; or
- (3) when the reason for reduction or termination is that there are insufficient funds to continue to pay for services for all current consumers which results in a change affecting some or all consumers.
- (4) if services have been suspended for more than 30 days, services will not be reinstated during the appeal process.

**40.02 HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS (OAH)**

**(A) Parties Entitled to a Hearing.** Parties who have been adversely affected by a denial, reduction or termination of benefits pursuant to this policy manual by an AAA, service provider, or authorized agent of the Bureau of Elder and Adult Services, or parties who have exhausted the complaint resolution procedure in Section 40.04 of this policy manual, may request an administrative hearing before the OAH.

**(B) Hearing Procedures.** Hearings shall be governed by the Administrative Procedures Act, 5 M.R.S.A. Sections 9051-9062, and by the OAH's Administrative Hearings Manual

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(hereinafter called the AHU Manual), and by the provisions of this section. The process includes:

- (1) A request for a hearing pursuant to Section 40.01 must be received by the Bureau of Elder and Adult Services either verbally or in writing from the consumer or the consumer's designated representative within sixty (60) calendar days of the date of the notice of adverse action. In order for services to be continued during the appeal process pursuant to Section 40.01 (E), a request for a hearing must be received by the Bureau of Elder and Adult Services within ten (10) calendar days of the date of the notice or in cases of probable fraud within five (5) calendar days of the date of the notice of the reduction or termination.
- (2) The OAH will give the notice of the hearing to the appropriate parties;
- (3) After the hearing, reports, recommendations and final decisions of the OAH and/or the Commissioner of Human Services shall be mailed to the appropriate parties;
- (4) The final decision shall be in writing and set forth the complainant's rights to appeal.
  - (a) For any applicant for designation as a PSA, the written decision shall state that the party has the right to appeal the decision to the Commissioner of the United States Administration on Aging, in accordance with 45 CFR Section 1321.31.
  - (b) For all other parties, the written decision shall state that the party has the right to appeal the decision to the Maine Superior Court, as provided in 5 M.R.S.A. Sections 11001-11008.
- (5) The OAH may deny or dismiss a request for a hearing if the sole issue being appealed is one of federal or state law or policy requiring an automatic change adversely affecting some or all consumers. This dismissal is the final agency action in this matter.

#### 40.03 A GOOD CAUSE EXCEPTION

- (A) **Failure to File Timely Request.** Any time a complainant fails to request complaint resolution or a waiver of payment within the time periods contained in these rules, the complainant will be considered to have waived or abandoned his/her appeal rights, unless good cause for failure to meet the deadlines can be demonstrated by the complainant.
  - (2) A request for a good cause exception must be in writing and received within 10 calendar days after the reason for good cause no longer exists to the Director of the Bureau of Elder and Adult Services.
  - (2) The Bureau of Elder and Adult Services must make a finding and issue a written decision within ten (10) calendar days.
- (B) **Good Cause.** Good cause exists if during the time period when the complaint resolution or waiver request should have been filed, there is:

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- (1) A death or serious illness in the complainant's immediate family or household; or
  - (2) A personal injury or illness which reasonably prevents the complainant from making a timely request for complaint resolution or a waiver; or
  - (3) An emergency or unforeseen event which reasonably prevents the complainant from making a timely request for complaint resolution or a waiver; or
  - (4) Incorrect or incomplete information about when or how to request complaint resolution or a waiver was provided to the complainant by the AAA, service provider, authorized agent of the Bureau of Elder and Adult Services or the Bureau of Elder and Adult Services.
- (C) **Right to Appeal Denial of Good Cause.** A complainant whose claim of good cause has been denied will be notified of this conclusion. The notice will inform the complainant of the right to request an Administrative Hearing as described in section 40.02. The request for a hearing must be received within ten (10) calendar days of the date of the notice.

**40.04 COMPLAINT RESOLUTION FOR AAA, SERVICE PROVIDERS AND AUTHORIZED AGENTS OF THE BUREAU OF ELDER AND ADULT SERVICES AFFECTED BY ACTIONS OF BUREAU OF ELDER AND ADULT SERVICES**

- (A) **Parties Entitled to Complaint Resolution.** Parties who have been adversely affected by actions of the Bureau of Elder and Adult Services shall have the opportunity to use this complaint resolution procedure. This Section (40.04) does not apply to:
- (1) Requests for waivers regarding consumer payments;
  - (2) Allegations of misconduct of Bureau of Elder and Adult Services staff which are handled in accordance with the external complaint procedures of the DHS Personnel Division;
  - (3) Actions by Bureau of Elder and Adult Services staff carrying out Adult Protective legal mandates; or
  - (4) Award decisions of the Bureau of Elder and Adult Services based on requests for proposals.
- (B) **Complaint Resolution Procedures of the Bureau of Elder and Adult Services.**
- (1) A party may make a written or verbal request for complaint resolution to the Bureau of Elder and Adult Services' central office. The request must be received within ten (10) days of the date of the adverse action except where good cause exists under Section 40.03 of this Manual.
  - (2) The Bureau of Elder and Adult Services shall make a record of every request for complaint resolution.
  - (3) The Director of Bureau of Elder and Adult Services or designee shall determine whether complaints are excluded under (A) above.

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- (4) The Bureau of Elder and Adult Services shall hold an informal conference within twenty (20) calendar days of the complainant's request. Bureau of Elder and Adult Services shall give written notice seven (7) days prior to the date of the informal conference to the following parties:
  - (a) The complainant by registered mail;
  - (b) The complainant's designated representative, if applicable.
- (5) The Director of the Bureau of Elder and Adult Services or a designee shall conduct the informal conference and shall allow all participants to offer relevant information during the conference.
- (6) The Director of the Bureau of Elder and Adult Services or a designee shall make a record of the conference, including the identity of those participating, a summary of the information present, a copy of all written material presented or submitted and, an audio tape.
- (7) The Director of the Bureau of Elder and Adult Services or a designee shall issue a written decision on the matter within fifteen (15) calendar days of the conference. The Bureau of Elder and Adult Services shall mail a copy of the decision to each of the parties entitled to notice under Section 40.(04)(B)(4), above. The Bureau of Elder and Adult Services shall send the complainant's copy by certified mail, return receipt requested.
- (8) In its written decision the Bureau of Elder and Adult Services must include the following information:
  - (a) A brief statement of reasons for the decision;
  - (b) An explanation of the complainant's right to request a hearing before the Office of Administrative Hearing (OAH);
  - (c) That the Bureau of Elder and Adult Services must receive a request, either verbally or in writing, for a hearing before the Office of Administrative Hearings within ten (10) calendar days of the written decision; and
  - (d) A list of selected legal assistance providers and advocacy agencies available to assist the consumer.

**40.05 CONFIDENTIALITY OF INFORMATION**

- (A) **Confidentiality.** The Bureau of Elder and Adult Services, the AAA's and all service providers and authorized agents are prohibited from disclosing any information received about a consumer in the conduct of their responsibilities other than to employees or agents of their agency who have a need to know the information as part of their job responsibility, unless one of the following conditions is met:
  - (1) Disclosure of the information is required by court order or to comply with reporting provisions under the Adult Protective Services Act;

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- (2) Disclosure of the information is required for program monitoring and evaluation by Federal or State law;
  - (3) The information is disclosed in a form that does not identify the person. The information disclosed shall exclude the consumer's name, address, social security number, and any other details that are reasonably likely to enable others to identify the consumer; or
  - (4) The Bureau of Elder and Adult Services, the AAA's, service provider or authorized agent has obtained the informed consent of the consumer or his or her legal representative.
- (B) **Public Access and Disclosure of Information by the Bureau of Elder and Adult Services.** Copies of all regulations, manuals, guidelines, and standards referred to by these regulations shall be maintained by the Bureau of Elder and Adult Services, the AAA's, service providers and authorized agents and made available for public inspection. The Bureau of Elder and Adult Services shall make available at all reasonable times and places to all interested parties these written policies and rules and all other information in its custody except for:
- (1) Information subject to the confidentiality requirement in 45 CFR Section 1321.51 and Section 40.(05)(A), above;
  - (2) Information subject to confidentiality requirements in other Federal and State statutes and regulations; and
  - (3) Information that is exempt from disclosure under the Federal Freedom of Information Act, 5 U.S.C. Section 552, the State Freedom of Access law, 1 M.R.S.A. Section 401 et seq., and under regulations promulgated by the Department of Human Services.

**40.06 CONTRIBUTIONS FOR TITLE III SERVICES**

Title III funds may not be used in programs that require payment of a fee as a condition of receiving service. Agencies providing services funded by Title III must, however, provide consumers with opportunities to contribute. Consumers who are otherwise eligible for Title III services may not be denied such services because they will not or cannot contribute to the cost. Each service provider must develop written procedures for collecting voluntary contributions. The procedure must protect the privacy of the consumer's contribution. A means test may not be used as a basis for determining suggested contributions for Title III funded services.

**40.07 PURCHASING GOODS AND SERVICES IN EXCESS OF \$25,000**

- (A) **Purchasing Requirements.** Grantees and contractors purchasing goods or services costing in excess of \$25,000 must comply with all appropriate State and Federal requirements including Federal Circulars A-110 and A-122.
- (B) **Planning Service Area Coverage Not Required.** No proposal responding to an RFP required under this Section will be refused on the sole grounds that it does not provide for delivery of services to the whole of the PSA.

**40.08 BUREAU OF ELDER AND ADULTS SERVICES ACCESS TO RECORDS AND REPORTS**

- (A) Provision of Records Without Cost.** All parties receiving funds from the Bureau of Elder and Adult Services will provide all information and records relevant to determination of compliance with these rules or to monitoring and evaluating programs, facilities and/or services to the Bureau of Elder and Adult Services without cost. A single consumer's record must be provided within two (2) working days. Larger quantities of records must be provided within five (5) working days.
- (B) Providing Accurate and Timely Reports.** All parties licensed by or receiving funds from the Bureau of Elder and Adult Services are responsible for providing accurate and timely reports in compliance with applicable program policy and contract provisions. Failure to do so may result in termination of the contract, recoupment of some or all of funds contracted or granted by the Bureau of Elder and Adult Services, or delay of award of additional funds until required reports are received.

**40.09 WAIVER OR MODIFICATION OF THESE RULES**

- (A)** The Bureau of Elder and Adult Services may waive or modify any provision in this Bureau of Elder and Adult Services Policy Manual (10-149-5) not mandated by State or Federal statute, regulation, or local government.
- (B)** A waiver may be issued for a specific period of time, not to exceed one year.
- (C)** A written waiver must include:

  - (1)** A statement of the rule for which the waiver is requested and
  - (2)** The reason why the Bureau is waiving the rule.